Original: PM/SAS-Kelly

DEPARTMENT OF STATE

ACTION MEMORANDUM

8021726X

1980 OCT 24 AM 9 34

October 14, 1980

DLPT:
F
T
C
EUC
H
HA
L
PM
S/P
RF:rw
FAIM

LIMITED OFFICIAL USE

TO: D - The Deputy Secretary

THROUGH: T - Matthew Nimetz

FROM: PM - Reginald Bartholomew
HA - Patt Derian

SUBJECT: Certification of Compliance with Section 502B of the Foreign Assistance Act

SUMMARY: It is proposed that you certify to Congress that the FY 81 security assistance program has been reviewed and found to be in compliance with Section 502B of the Foreign Assistance Act of 1961, as amended (the FAA).

ANALYSIS OF ISSUES

Addressing security assistance and human rights generally, Section 502B (a)(2) of the FAA specifically requires the President to certify to the Congress that "extraordinary circumstances exist" warranting the provision of international military education and training (IMET) to any government engaged in a "consistent pattern of gross violations of internationally recognized human rights." Such a certification must be rendered before IMET may be provided to such a country. If no proposed IMET recipient falls into "the consistent and gross violator" category, and we are prepared to defend that judgment publicly, no certification under section 502B need be executed. (A listing of FY 81 intended IMET recipients is attached at Tab B). The President's functions under section 502B of the Act have been delegated to the Secretary of State by Executive Order 12163 of September 29, 1979 (44 F.R. 56673), and may be exercised by the Deputy Secretary under Department of State Delegation of Authority No. 104, as amended.

LIMITED OFFICIAL USE

8001940138

RDS ☐ or XDS ☐ EXT. DATE _____
TS AUTH. _____ REASON(S) _____
ENDORSE EXISTING MARKINGS ☐
DECLASSIFIED ☐ RELEASABLE ☒
RELEASE DENIED ☐
PA or FOI EXEMPTIONS _____

In each of the past two years you executed certifications (Tab C) to the effect that you had reviewed the entire range of FY 1979 and FY 1980 security assistance programs and found the proposals to be "consistent with the provisions of section 502B" and, with respect to "those countries where human rights conditions give rise to the most serious concerns", that the security assistance being provided was "warranted in each case by extraordinary circumstances involving the national security interests of the United States." In order to avoid any action which would explicitly or implicitly characterize an individual country as a "gross violator", the certifications did not single out individual nations but rather applied to all proposed recipients and to all FY 1979 and FY 1980 security assistance programs.

EVALUATION OF OPTIONS

FY 1981 programs were developed on the basis of a careful review of overall U.S. objectives and interests, including human rights, in each of the proposed recipient countries. In addition, ongoing decisions required to implement programs also are made with human rights factors in mind. On this basis, we believe you may validly certify as previously you did in FY 1979 and 1980 that the FY 1981 program is consistent with the provisions of section 502B. This approach could reduce chances of public confrontations with congressional members concerned about human rights situations in countries in which they have an interest. This would continue the practice of not singling out individual countries to certify as "gross human rights violators" which could have adverse consequences under other U.S. statutes.

HA has carefully reviewed the list of intended IMET recipients for FY 81 and, while it does not oppose inclusion of any of the programs, has concluded that there are several countries which could be characterized as engaged in a "consistent pattern of gross violations."

RECOMMENDATION

That you sign and forward an FY 1981 certification at Tab A, comparable to that executed last year, which would be transmitted to the Congress and pubished in the Federal Register (Favored by HA, PM and L).

Fa r recommended option ✓

Prefer other course of action _____

Attachments:

Tab A - Draft FY 81 Certification and Justification
Tab B - FY 81 intended IMET recipients
Tab C - FY 79 and FY 80 Certifications

Drafted:PM/SAS:EKelly:tlb
10/3/80:ext 23876

Cleared:PM/SAS:JPFarber
L/PM:TBorek
HA:RJacobs
T:AGiese
PM/SSP:RMantel
H:AThoms
PM:DAO'Donohue

DEPARTMENT OF STATE
WASHINGTON

CERTIFICATION

In accordance with Section 502B of the Foreign Assistance Act of 1961, as amended (the Act), I have reviewed the international security assistance programs of the United States for the fiscal year 1981 in order to assure that:

(1) all security assistance programs are consistent with the provisions of Section 502B of the Act concerning the promotion and advancement of human rights and the avoidance of United States identification with human rights violations, and

(2) with respect to those countries where human rights conditions give rise to the most serious concerns, the security assistance provided by the United States is warranted in each case by extraordinary circumstances involving the national security interests of the United States.

On the basis of this review, I certify that these security assistance programs are in compliance with the requirements of Section 502B of the Act.

This certification shall be reported to the Congress and published in the Federal Register as required by law.

10-25-80
Date

William Christopher
The Deputy Secretary

8001940118

Justification for Certification under Section 502B of the Foreign Assistance Act of 1961, as amended

Section 502B of the Foreign Assistance Act of 1961, as amended, establishes human rights as an important factor to be taken into account in the formulation and implementation of security assistance programs. It directs that security assistance programs be formulated and carried out "in a manner which will promote and advance human rights and avoid identification of the United States, through such programs, with governments which deny to their people internationally recognized human rights and fundamental freedoms". It provides that security assistance be furnished to countries with a "consistent pattern of gross violations" of human rights only where that assistance is warranted by extraordinary circumstances. With respect to International Military Education and Training (IMET), Section 502B prohibits the furnishing of IMET to any country the government of which engages in a "consistent pattern of gross violations of internationally recognized human rights" unless the President certifies and reports to the Congress that "extraordinary circumstances exist" warranting the provision of IMET to that country.

The overall United States security assistance program comprises four elements:

Military Assistance (MAP). Through this program, the United States provides defense articles and defense services on a grant basis to eligible foreign countries. In recent years this program has been greatly reduced and MAP is now furnished to only a few countries with respect to which the United States has important security interests. The human rights record and practices of proposed MAP recipients are taken fully into account, along with other United States interests, in determining whether to seek authorization for a MAP country program as well as in determining the size and content of each such program. Since the fiscal year 1977, each country MAP program must be specifically authorized by legislation. The Administration has proposed MAP programs in the fiscal year 1981 for Portugal, Spain, and the Philippines.

8001940143

Foreign Military Sales and Financing (FMS). Through this program the United States Government furnishes defense articles and defense services to eligible foreign countries and international organizations on a sales basis. For a limited number of countries otherwise unable to procure needed defense articles from their own immediately available resources, financing is extended under the FMS financing program, which has supplanted MAP as the primary source of United States financial support for military acquisitions. Each year's FMS financing program is established after thorough country-by-country review during the course of which human rights practices of each recipient are again taken into account at the time financing is actually extended. Use of the loan funds for specific purchases may be delayed or denied for human rights reasons.

FMS sales themselves, regardless of the manner in which they are financed, are subject to review and approval on a case-by-case basis. This provides an opportunity to consider each proposed sale in light of the current human rights grounds as well as for other foreign policy or national security reasons.

International Military Education and Training (IMET). Through this program the United States furnishes training to foreign military and related civilian personnel on a grant basis. IMET is considered to be the most "cost-effective" element of the entire range of security assistance programs in light of its potential for directly influencing an important element in many foreign governments. For this reason, the emphasis of the IMET program has gradually shifted from technical and weapons-oriented training toward professional and management training. IMET courses, moreover, expose foreign personnel to the United States Armed Forces and attempt to impress upon them the values of a professional military fully responsive to civilian authority. Aspects of the IMET program are designed to increase the awareness of IMET trainees of basic international human rights issues. In these ways, the IMET program can have a favorable human rights impact, which is taken into account in reviewing proposed IMET programs. In view of the close attention that Congress has requested be given to IMET programs under section 502B, the program justification and the human rights record of each proposed recipient country receive particularly careful review.

Economic Support Fund and Peacekeeping and Related Programs. These programs entail the provision of non-military forms of assistance, on a grant or loan basis for countries of special importance to United States security interests. The human rights record of each proposed recipient of this form of assistance is given consideration in formulating country programs. Relevant factors in this evaluation are the contributions which this assistance can make to strenghtening democracies of strategic importance to the United States and to promoting economic and political stability which may be conducive to favorable human rights developments.

Conclusion.

Formulation of the fiscal year 1981 programs involved a careful review of the overall United States objectives and interests, including human rights, in each of the proposed recipient countries. Along with human rights, these interests include political and economic considerations and military and strategic factors, including where relevant the presence of United States military facilities, treaty obligations, regional security balances, and arms transfer restraint considerations. With particular regard to the United States interest in promoting increased observance of and respect for human rights and fundamental freedoms, each proposed country program was evaluated in light of, and with regard for, the human rights situation and trend in the country concerned.

In this program review, the human rights record of individual countries was a principal factor in determining the proposed program levels. Additionally, positive human rights records will be factors in minimizing the scope of program reductions if necessitated by reduced appropriations levels available in the fiscal year 1981.

Consideration of the human rights records and practices of security assistance recipients is not limited to the program formulation stage. Ongoing decisions required in the course of the implementation of approved programs are made, and will continue to be made, with human rights factors in mind.

8001940144

With respect to those recipient countries whose human rights records give rise to the most serious concerns, the human rights evaluation at both the program formulation and implementation stages are intended to ensure that the security assistance to be furnished by the United States in each case is warranted by extraordinary circumstances involving the national security interests of the United States.

8001940114 5

PROPOSED FY 81 IMET RECIPIENTS

Burma
Indonesia
Korea
Malaysia
Philippines
Thailand
Bangladesh
Egypt
India
Jordan
Lebanon
Morocco
Nepal
Sri Lanka
Tunisia
Yemen
Austria
Finland
Greece
Portugal
Spain
Turkey
Yugoslavia
Botswana
Cameroon
Ghana
Ivory Coast
Kenya
Liberia
Gabon
Malawi
Mali
Niger
Rwanda
Senegal
Somalia
Sudan
Tanzania
Togo
Uganda
Upper Volta
Zaire
Bahamas
Barbados
Colombia
Dominica
Dominican Republic
Ecuador
El Salvador
Guyana
Haiti
Honduras
Jamaica
Mexico
Nicaragua
Panama
Peru
St. Lucia
St. Vincent

NOTES:

1. The programs on this list are subject to final Congressional action on the pending FY 81 Foreign Assistance Authorization and Appropriations bills.

2. The list excludes Bolivia where IMET programs have been suspended.

DEPARTMENT OF STATE
WASHINGTON

DETERMINATION

In accordance with Section 502B of the Foreign Assistance Act of 1961, as amended (the Act), I have reviewed the international security assistance programs of the United States for the fiscal year 1979 in order to assure that:

(1) all security assistance programs are consistent with the provisions of Section 502B of the Act concerning the promotion and advancement of human rights and the avoidance of United States identification with human rights violations, and

(2) with respect to those countries where human rights conditions give rise to the most serious concerns, the security assistance provided by the United States is warranted in each case by extraordinary circumstances involving the national security interests of the United States.

On the basis of this review, I certify that these security assistance programs are in compliance with the requirements of section 502B of the Act.

This determination shall be reported to the Congress and published in the Federal Register as required by law. Specific allocations of funds for security assistance programs for the fiscal year 1979 have been reported to the Congress in accordance with Section 653(a) of this Act.

February 24, 1979
Date

Warren Christopher
Acting Secretary of State

8001940114 7

DEPARTMENT OF STATE
WASHINGTON

DETERMINATION

In accordance with Section 502B of the Foreign Assistance Act of 1961, as amended (the Act), I have reviewed the international security assistance programs of the United States for the fiscal year 1980 in order to assure that:

(1) all security assistance programs are consistent with the provisions of Section 502B of the Act concerning the promotion and advancement of human rights and the avoidance of United States identification with human rights violations, and

(2) with respect to those countries where human rights conditions give rise to the most serious concerns, the security assistance provided by the United States is warranted in each case by extraordinary circumstances involving the national security interests of the United States.

On the basis of this review, I certify that these security assistance programs are in compliance with the requirements of section 502B of the Act.

This determination shall be reported to the Congress and published in the Federal Register as required by law.

November 17, 1979
Date

Warren Christopher
The Deputy Secretary

DOD194018